

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CLAUDETTE CHAVEZ-HANKINS,
PAUL PACHECO, and MIGUEL VEGA,

Plaintiffs,

vs.

No.

DIANNA J. DURAN, in her official
capacity as New Mexico Secretary of
State and SUSANA MARTINEZ, in her
official capacity as Governor of New
Mexico

A Three Judge Panel Is
Requested Pursuant To
28 U.S.C. § 2284

Defendants.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND FOR APPOINTMENT OF A THREE JUDGE PANEL**

PLAINTIFFS, Claudette Chavez-Hankins, Paul Pacheco and Miguel Vega, by and
through their undersigned counsel, for their Complaint for Declaratory and Injunctive Relief
state as follows:

Nature of the Action

1. This lawsuit seeks the establishment of Constitutionally sound and lawful districts for the New Mexico House of Representatives (“State House”). At present, the districts are malapportioned and violate the doctrine of one person, one vote mandated by the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The State has failed to enact a law providing for redistricting its House of Representatives. A State District Court has drawn a lawful redistricting plan. The Supreme Court of the State of New Mexico, however, in an expedited writ proceeding, has reversed and remanded the

District Court's decision with instructions that can only result in a plan that will violate the one person, one vote Constitutional mandate and improperly apply the Federal Voting Rights Act in violation of the Equal Protection Clause.

Contrary to clear United States Supreme Court mandates, *see, e.g., Chapman v. Meier*, 420 U.S. 1 (1975), in its remand order the New Mexico Supreme Court has instructed the state district court judge to sacrifice the overriding constitutional requirement of population equality in order to reduce the number of split municipalities and to achieve a map more favorable to Democrats, neither of which is a significant, historic state policy in New Mexico, and to draw a district in eastern New Mexico in a manner that will amount to unlawful racial gerrymandering. A three judge panel is required to redraw the current State House districts and to enjoin the Defendants from using unlawful districts in any future election.

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over this action pursuant to the Fourteenth Amendment of the United States Constitution, 28 U.S.C. §§ 1331, 1343(a)(3)-(4), 2201, and 2202, and 42 U.S.C. §§ 1983 and 1988.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

4. Because this is an action challenging the apportionment of a statewide legislative body, a three-judge Court should be convened pursuant to 28 U.S.C. § 2284.

Parties

5. Plaintiff Claudette Chavez-Hankins is a New Mexico citizen and voter. She is Hispanic and intends to be a candidate in 2012 for the State House on the West Side of the City of Albuquerque. Ms. Chavez-Hankins currently lives in House District 29, a

grossly overpopulated district that contains over twice the population allowed by the 2010 census. Ms. Chavez-Hankins' vote would be severely and unconstitutionally diluted in any election in which she was asked to cast a ballot for State Representative in House District 29 as it is currently apportioned. Reapportionment is mandatory. As a candidate, therefore, Ms. Chavez-Hankins is at this time unable to determine the boundaries of the House district she lives in, and from which she will run for office, due to the failure of the political institutions of the State of New Mexico, including the state courts, to implement a valid redistricting plan for the State House.

6. Plaintiff Paul Pacheco is a New Mexico citizen and voter. Mr. Pacheco intends to be a candidate for the State House and lives in House District 23, which is overpopulated by 5.3 percent, unconstitutionally diluting his vote.

7. Plaintiff Miguel Vega is a citizen of the State of New Mexico who resides in House District 67, Curry County.

8. Defendant, Dianna J. Duran is the duly elected Secretary of State of the State of New Mexico. She is the chief election officer of the State and her duties include ensuring that elections in New Mexico are conducted in a fair and lawful manner, keeping records of state elections, giving notice of elections, receiving filings from candidates for office, preparing ballots, receiving election returns, enforcing measures against voter fraud and various other election duties. *See, e.g.* NMSA 1978, Sections 1-2-2.

9. Defendant Susana Martinez is the duly elected Governor of the State of New Mexico. She is the Chief Executive Officer of the State and her duties and powers include taking care that the laws of the State are faithfully executed, calling the State

Legislature into special session, signing bills sent to her by the Legislature into law and vetoing bills. The Governor also is required to issue a proclamation identifying each of the districts to be used for elections for the State House. *See*, NMSA 1978, §1-8-12. A redistricting plan for the State House must be adopted before a proper proclamation can be issued.

GENERAL ALLEGATIONS

10. The United States Census Bureau conducts a decennial census throughout the United States. The most recent census was conducted in 2010, and established that the population of the State of New Mexico increased since the 2000 census by approximately 13.2 percent or by 240,133 people.

11. According to the 2010 census, New Mexico's population is 2,059,179 people.

12. The State House contains seventy members. Each member of the State House represents a single district. Accordingly there are seventy State House districts throughout New Mexico. N.M. Const., Art. IV, §3(C).

13. The current State House district boundaries were created in 2002 by a New Mexico District Court.

14. Dividing New Mexico's population as shown by the 2010 census by seventy equals 29,417, which is the current ideal population for a State House district.

15. Due to population growth, and population shifts, that occurred over the last decade, the 2002 State House districts now contain population disparities that are unconstitutional under the United States Constitution, Amendment XIV and under the New Mexico Constitution, Article II, §18. *Reynolds v. Sims*, 377 U.S. 533, 557 (1964).

16. The 2002 State House districts deviate from the current ideal population for a State House district by as much as 100.9 percent. The current deviations among the 2002 districts vary markedly. For example, Districts 12, 13, 29, 44 and 60 in Albuquerque are overpopulated by 31.6 percent, 79.3 percent, 100.9 percent, 73.5 percent and 40.1 percent, respectively. Individual voters living in these districts have less voting power than individuals living in underpopulated or properly populated districts, a violation of the one person, one vote doctrine.

17. On the other hand, districts in north central New Mexico are under populated. For example Districts 41, 42, 43, 65, 68 and 69 are underpopulated between minus 4.2 percent and minus 19.3 percent.

18. The most dramatic population changes in New Mexico took place on Albuquerque's West Side and in Rio Rancho, which experienced explosive growth over the last decade.

19. On the other hand, districts in other areas of the state, for example in north central New Mexico, saw dramatically slower growth during the past decade. As a result there are regions that lack sufficient population to support the current number of districts contained in those regions.

20. For example Districts 40, 41, 42, 45, 46, 47, 48, 50, 63, 68, and 70 in northern New Mexico have a cumulative negative deviation of approximately one hundred percent. In other words, these eleven districts contain only enough population to support ten districts of the ideal size.

21. Reapportionment of the State House is mandated by law to equalize representation between State House districts in order to effectuate the one person, one vote doctrine.

Failed State Efforts to Reapportion the State House

22. Governor Susana Martinez called the New Mexico Legislature into a special session in September 2011, for the purpose of redrawing district lines for a number of offices, including the State House.

23. The Democratic Party controls both houses of the New Mexico Legislature.

24. The Legislature considered numerous redistricting plans during the Special Session. Many of these plans were created by Brian Sanderoff of Research and Polling, Inc. or by other employees of Research and Polling, Inc.

25. Research and Polling, Inc. was under contract to perform demographic and mapping work prior to and during the Special Session.

26. Sanderoff had performed a similar function during a special session held in 2001 for the purpose of redistricting. Later in 2001, Sanderoff also served as an expert witness on behalf of the Democratic leadership of the Legislature in redistricting litigation, his same role in 2011.

27. Late in the Special Session, HB 39 was drafted and introduced for the purpose of redistricting the State House. HB 39 passed both houses of the Legislature in very short order with almost all Democrats voting in favor. No Republican legislators voted for HB 39.

28. HB 39 was created by Sanderoff's company, Research and Polling, Inc., based on very specific instructions from Ben Lujan, the Speaker of the State House. In

particular, Lujan's plan was designed to avoid eliminating a district in north central New Mexico and to enhance Democrat performance. HB 39, by its design, shortchanged the City of Albuquerque by one district. To accomplish this, among other things, it deliberately underpopulated State House districts in north central New Mexico while overpopulating some districts in Albuquerque.

29. Governor Martinez vetoed HB 39, and that bill never became law.

30. After the Special Session, a number of lawsuits were filed in various New Mexico State District Courts asking that Court to adopt a constitutional redistricting plan for the State House, among other offices. The first such lawsuit was filed in the Second Judicial District Court in Bernalillo County. The second such lawsuit was filed in Lea County.

31. Lawsuits by Democrat legislators and others were filed shortly thereafter in the First Judicial District Court in Santa Fe County.

32. Over the objections of the parties filing the earlier lawsuits, the New Mexico Supreme Court consolidated all of the lawsuits into the later filed lawsuit case number D-0101-CV-2011-02942 (the "State Lawsuit"). Further, in an Order dated October 12, 2011 the Supreme Court sua sponte appointed James Hall, a retired Santa Fe District Court Judge, as Judge Pro Tempore to preside over the State Lawsuit.

33. No party objected to appointment of Judge Hall as judge for the redistricting litigation.

34. After Judge Hall was appointed, the parties to the State Lawsuit pursued extensive discovery and, in December 2011, an eight day evidentiary bench trial concerning only the State House was held in Santa Fe before Judge Hall. Prior to concluding the evidentiary portion of the trial, Judge Hall invited any and all parties to

provide additional testimony or evidence. No party to the litigation objected or offered to present any additional testimony.

35. On January 3, 2012, Judge Hall filed his Findings of Fact and Conclusions of Law in the matter of the State House of Representatives. In his decision, Judge Hall adopted a redistricting plan originating from one presented by the Governor. This map incorporated changes and revisions suggested by the Court during trial and also addressed certain concerns raised by other parties and the criticisms of Brian Sanderoff and other experts employed by various Democratic affiliated parties. The final plan adopted by Judge Hall also incorporated some changes by the Judge himself.

36. Judge Hall had invited all parties to submit additional plans and two of the parties representing Democrat legislators submitted plans with reduced deviations. Judge Hall carefully reviewed all the plans.

37. The redistricting plan that Judge Hall ordered was constitutional, fully complied with federal and state law, and was the result of careful and thoughtful consideration on his part. Judge Hall's plan incorporated the plan desired by those Native American governments that had intervened in the State Lawsuit down to the last precinct. It incorporated suggestions made by various witnesses during trial. It did not shortchange Albuquerque. It properly consolidated districts in north central New Mexico, in central Albuquerque and in southeastern New Mexico and contained many details reflecting Judge Hall's careful review of the evidence before him. Judge Hall's Findings of Fact and Conclusions of Law reflect his thorough study of applicable law pertaining to redistricting and his awareness of the proper role of a Court in redistricting, including that of providing a neutral forum.

38. The Executive Plan Alternative 3 as modified by Judge Hall was only adopted after Judge Hall determined, based upon the evidence presented and applicable legal principles, that it best complied “with the legal standards for court-ordered redistricting.” Exhibit 2, Judge Hall’s Findings of Fact and Conclusions of Law Dated January 3, 2012 at ¶ 34. Extensive and detailed findings addressed the few exceptions to the low deviations set forth in the final map and all deviations were found to be necessitated by the Voting Rights Act. *Id.*

39. Judge Hall, after days of evaluating evidence and consideration, determined that Executive Plan Alternative 3 preserved all political, geographic and communities of interest “to a reasonable degree.” *Id.* He found that the incorporation of the joint Native American plan had a limited impact on the partisan performance measures of individual districts. *Id.*

40. Although the New Mexico Supreme Court references the need to avoid “inflict[ing] significant partisan bias” it does not and cannot conclude that Judge Hall’s plan in fact inflicts significant partisan bias. Exhibit 1, p. 13. The Supreme Court Order does reference Mr. Sanderoff’s testimony (12/22/11 pgs. 55-66). However, Mr. Sanderoff actually testifies to both the increase and decrease in the political performance numbers, not to the existence of “significant partisan performance changes” *Id.* at 14.

41. Moreover, Mr. Sanderoff was not referring to partisan decreases or increases from the current map, but increases and decreases from an earlier version of a map presented to the Court. Judge Hall’s map reduces (from the current map) Republican performance in many districts including but not limited to the districts 7, 15, and 67. Nonetheless, the Order commands the District Court to reduce the number of

Republican leaning seats, to address the alleged “partisan bias” referenced in the Order. The Supreme Court Order simply got it wrong factually, and as a matter of law and proper procedure. *Id.*

42. After Judge Hall entered his order adopting his State House plan, the Speaker of the House and President Pro-Tem of the Senate filed a request for an emergency writ with the New Mexico Supreme Court. A Democrat State Representative, joined by other parties, also filed a writ petition attacking Judge Hall’s State House ruling. Those parties attached evidence to their writ petition that had not been presented in the trial court.

43. The Supreme Court entered an expedited briefing schedule. The schedule followed was extremely and unusually rapid given the complexity of the subject matter and the amount of information which had been adduced during the eight day trial.

40. On February 7, 2012 the Supreme Court heard oral arguments on the writ petitions. After reweighing some trial evidence de novo and accepting additional evidence from one party during the emergency writ proceeding, on February 10, 2012, the Supreme Court entered an Order reversing Judge Hall’s decision and remanding the case for further proceedings with very detailed instructions that will necessarily violate the United States Constitution. A copy of the Order is Exhibit 1. The reversal of Judge Hall’s decision effectively restored the 2002 State House districts and leaves New Mexico without a lawful set of State House districts.

44. In its Order, the Supreme Court criticizes the District Court’s adherence to the one person, one vote principle, and the District Court’s goal of using, where possible, minimum population deviations in conformance with *Chapman v. Meier*, 420 U.S. 1

(1975). At the same time the Supreme Court declined to expressly establish any guidelines as to permissible deviations or to provide any other meaningful guidance. Instead, the Supreme Court established the “standard” as now being something other than what Judge Hall found and made reference to “more flexible deviations applied historically.” Order at p. 13. The Supreme Court did reference in its Order the 2002 District Court’s use of a ten percent deviation standard but did not expressly adopt that standard, which has been called into question for court drawn maps, *see Chapman, supra*.

45. The Order requires the District Court to violate the one-person one-vote principle. It directs the District Court as follows: “When other policies, such as avoiding bifurcation of municipalities and other recognized communities of interest, can be obtained with population deviations within the more flexible deviations applied historically, it is the duty of the court to accommodate those legitimate state interests, where feasible, or explain why it could not do so.” Order at p. 13. First, this ignores the trial court record and Judge Hall’s decision which addresses specifically the bifurcation of communities and communities of interest. *See, Exhibit 2*, Findings of Fact and Conclusions of Law entered by Judge Hall on January 3, 2012, Finding Nos. 7, 36 and 74, and Conclusion Nos. 5-10, 14, 17, 27, and 34. Second, the New Mexico Supreme Court’s directions subordinate the one person, one vote Constitutional mandate to amorphous “communities of interest.” This assigns an impossible task to the District Court, especially because the term “communities of interest”, as expert testimony established at trial, is extraordinarily vague and subject to self-serving interpretation and partisan manipulation. The same parties complaining of these splits offered maps with municipality and community splits and usually more splits as well.

46. The District Court, on remand, is directed by the Order to “consider whether additional cities, such as Deming, Silver City, and Las Vegas, can be maintained whole through creating a plan with greater than one-percent deviations. While low population deviations are desired, they are not absolutely required if the district court can justify population deviations with the non-discriminatory application of historical, legitimate, and rational state policies.” Order at p. 19. This instruction is vague and the Opinion sets forth no reason for singling out the municipalities listed over other New Mexico municipalities. In fact, Silver City is presently split between District 38 and District 39 in the current plan, which was adopted in 2002. In the 2002 redistricting plan, the District Court also split numerous other cities, municipalities and towns despite the use of total deviations approaching ten percent.

47. In *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) aff’d 542 U.S. 947 (2004), a three judge panel of the U.S. District Court for the Northern District of Georgia held, and the United States Supreme Court summarily affirmed, that Georgia’s state legislative reapportionment plans, which deviated from population equality by a total of 9.98 percent, violated the one-person, one vote principle mandated by the United States Constitution.

48. Upholding the panel, the United States Supreme Court stated:

The District Court correctly held that the drafters’ desire to give an electoral advantage to certain regions of the State and to certain incumbents (but not incumbents as such) did not justify the conceded deviations from the principle of one person, one vote. *See Reynolds v. Sims*, 377 U.S. 533, 565-566 ... (regionalism is an impermissible basis for population deviations); *Gaffney v. Cummings*, 412 U.S. 735, 754 (“Multimember districts may be vulnerable if racial or political groups have been fenced out of the political process and their voting strength individually minimized”). *See also, Reynolds*, 377 U.S., at 579

(explaining that the “overriding objective” of districting must be substantial equality of population among the various districts” and that deviations from the equal-population principle are permissible only if “incident to the effectuation of a rational state policy”).

542 U.S. 947 at 949.

49. The existing malapportioned districts were created by the New Mexico District Court in 2002; that court employed a deviation range of plus or minus five percent. Despite this high deviation range the 2002 plan still split municipalities, cities, towns and “communities of interest,” including, but not limited to the municipalities of Silver City, Carlsbad, Gallup, Los Lunas, Portales, Artesia, Lovington, Espanola, Grants, Corrales, Bernalillo (town), Ruidoso, Belen, Aztec, Los Ranchos de Albuquerque, Bosque Farms, Edgewood, Santa Rosa, Estancia, Hurley and Tijeras. Larger municipalities such as Alamogordo, Hobbs, Rio Rancho and Roswell are split as well. Of course, some municipalities must be split as a matter of course to provide necessary population to appurtenant districts, and simply because they are too large to be placed into one district.

50. The New Mexico Supreme Court, weighing certain evidence during the emergency writ and preceding “largely under a de novo standard” (Opinion at p. 12), and reviewing evidence offered by one party in the form of an affidavit, concluded that an unacceptable partisan bias favoring Republicans existed in Judge Hall’s plan. The Supreme Court chose to overlook substantial, indeed conclusive, evidence that Judge Hall’s plan was at least as neutral as other plans that had been presented at trial, and was much more neutral than some plans. The Supreme Court also indulged itself in the fiction that a partisan-neutral plan is possible, ignoring the partisan effect of its own

Order. Order at page 20. As Justice Sutin said in his dissent, “[t]he quest for the perfectly neutral reapportionment map devoid of partisan effect or bias is illusory.” Order at page 24.

51. The Supreme Court’s Order directs that partisan performance changes be used as a basis for population inequality. Order at p. 20. The Order has substituted a goal of partisan performance for the proper goal of seeking districts as nearly equal as practicable as required by the U.S. Constitution.

52. Evidence adduced at trial demonstrated that Brian Sanderoff’s performance figures used during the Special Session and at trial systematically overstated Republican performance during presidential election years. The Supreme Court’s Order mandating a decrease in Republican districts, which relies upon the erroneous performance figures, is another error that itself creates a significant and improper partisan bias.

53. In 2002, the New Mexico District Court reduced the then-existing Republican performing districts by three (3) and increased the Democrat performing districts by three (3).

54. The Supreme Court in its Order has directed the District Court to come up with a plan more favorable to Democrats. Justice Sutin pointed this out in his dissent to the Supreme Court’s February 10, 2012 Order. Order at p. 31 (“...instruction essentially requiring Judge Hall to reduce Republican seats....”).

55. Not only did the New Mexico Supreme Court order Judge Hall to minimize municipality splits at the expense of what should be the paramount goal of population equality, it also unconstitutionally instructed him to relegate to secondary

importance the one person, one vote mandate in favor of the majority's view of "partisan neutrality": "The same [jettisoning de minimis population deviations among districts] holds true for plans that inflict significant partisan bias, even if it is unintended, if that bias can be ameliorated through the use of permissible, greater population deviations." Order at p. 13.

56. The Supreme Court has also instructed Judge Hall to apply race considerations as the predominant factor in drawing the lines of a particular district. The Supreme Court did not and could not find an unconstitutional gerrymander or a voting Rights Act violation, but directs the District Court to make various changes nevertheless.

57. Twenty-eight years ago, a federal three judge panel such as the one requested in this litigation, determined that then-existing circumstances in the Clovis, New Mexico, area required that a special district be created to address certain problems under Section 2 of the federal Voting Rights Act, 42 U.S.C. Section 1973 et seq. *Sanchez v. King*, No. 82-0067-M (D.N.M. 1984).

58. A generation has passed since the Sanchez decision. Voting Rights Act jurisprudence has evolved. In 1986, the United States Supreme Court held that three necessary preconditions must be established before one can consider whether Section 2 may require the drawing of a majority-minority district because failure to do so will dilute the minority group members' votes. The preconditions are: (1) a particular racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

59. However, once the necessary preconditions have been established, further analysis must be conducted. “[O]nly when a party has established the Gingles requirements does a court proceed to analyze whether a violation has occurred [or will occur in the absence of a drawn minority-majority district] based on the totality of the circumstances.” *Bartlett v. Strickland*, 556 U.S. 1, (2009). In assessing this “totality of the circumstances” courts are guided by ten factors described in the Voting Rights Act’s legislative history, *see, Gingles*, 478 U.S. at 36-37, including the extent to which members of the minority group bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.

60. Judge Hall found that Native Americans in New Mexico meet the three threshold criteria required by Gingles. In addition, Judge Hall found that “[u]nder the totality of circumstances, Native Americans do not possess the same opportunities to participate in the political process as other New Mexicans”. This justified Judge Hall’s use of higher deviations, and allowed consideration of race, in drawing majority districts for Native Americans.

61. On the other hand, although Judge Hall found that the three threshold criteria in Gingles were met for Hispanics in the Clovis, New Mexico area, looking at the totality of the circumstances, Judge Hall did not find any violation of the Voting Rights Act with respect to Hispanics in New Mexico. Instead, Judge Hall expressly held that: “All of the plans before the Court contain a significant number of Hispanic majority districts; however, the Court finds no persuasive evidence that Sec. 2 of the Voting Rights Act requires any particular Hispanic majority district be drawn.”

62. Despite Judge Hall's conclusions, the Supreme Court has directed Judge Hall to redraw District 67 (apparently the District 67 shown on Judge Hall's map), which is in the Clovis, New Mexico, area. Judge Hall has been ordered to redraw that District solely on racial considerations. Order at p. 20. Under the Supreme Court's remand instructions, race is to be the predominant factor in the drawing of the new district lines, and other race-neutral districting principles are to be subordinated to race. These instructions violate the United States and New Mexico Constitutions and misapply the Voting Rights Act.

63. In ordering this race-based districting, the Supreme Court relied on the 28 year old *Sanchez v. King* case, although it also noted, accurately, that the district in question, House District 63, (current map), had been "redrawn in shape" since *Sanchez v. King*. The population of the area has changed, as well.

64. Much time has elapsed during New Mexico's failed efforts to redistrict the State House. Important deadlines for candidates to gather petition signatures within their respective districts and make critical filings and declarations of candidacy are close at hand. Party nominating conventions are approaching, as is a primary election in early June. Ballots must be printed and distributed, including distribution to the brave individuals from New Mexico serving overseas in the military. The State of New Mexico is under a consent decree establishing deadlines for the timely distribution of ballots to military personnel.

65. The New Mexico Supreme Court's Order suggests to Judge hall that Brian Sanderoff would be a permissible candidate to serve as a Rule 11-706 expert. Order at page 19. Mr. Sanderoff is mentioned by name. As set forth above, Mr. Sanderoff was

employed as an expert witness for the Democratic Speaker of the House and President Pro Tem of the Senate in the redistricting trial. On February 13, 2012, Judge Hall entered an order appointing Mr. Sanderoff as an expert to “assist the court in drawing a reapportionment map for the New Mexico House of Representatives as detailed in the Supreme Court Order.”

66. New Mexico has failed to create lawful districts for the State House. Dissatisfied with the first effort, the New Mexico Supreme has sent the case, once again, to a State District Court for preparation of yet another map. The Supreme Court has given the District Court instructions, erroneous as a matter of law, which cannot fail to achieve a desired partisan result, and violate the one person, one vote principle. Federal intervention is required immediately.

67. Should new voting districts not be timely drawn in the State of New Mexico, the Plaintiffs and many New Mexico citizens will suffer dilution of their votes in elections held in 2012. This is because the current State House districts, drawn using numbers from the 2000 census, contain the significant population variances noted above.

CLAIM FOR RELIEF
(New Mexico’s State House Districts
Violate the United States Constitution)

68. Plaintiffs restate and incorporate by reference the allegations contained in paragraphs 1 through 67 and as though fully set forth herein.

69. The population increase in the State of New Mexico, as evidenced by the data from the 2010 census, has caused numerous State House districts, including districts in which Plaintiffs reside, to become malapportioned and overpopulated relative to other districts. Other New Mexico voters, including minority voters, reside in overpopulated and

malapportioned districts. As a result, the current State House districts dilute the votes of Plaintiffs and other New Mexico voters, including minority voters.

70. Article I, Section 2 of the United States Constitution guarantees to New Mexico voters an equal, fair and effective opportunity to cast a meaningful ballot for state legislative representatives regardless of the legislative district in which a voter resides, and that voters in a more populated district will not be subject to unlawful discrimination.

71. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution guarantees to New Mexico voters a right to equal representation in the New Mexico Legislature.

72. The United States Constitution requires that the State House districts be apportioned according to New Mexico's population, as determined by the 2010 census, thereby guaranteeing to New Mexico voters the creation of districts of equal population so that votes for State House Representatives in different districts are given equal weight.

73. The current State House districts are not properly apportioned according to the population of the State of New Mexico, unlawfully discriminating against Plaintiffs.

74. A justiciable controversy exists among the parties and Plaintiffs are entitled to a declaratory judgment under 28 U.S.C. §2201 *et seq.* that the current State House districts are invalid because they fail to comply with the requirements of the United States Constitution.

75. Plaintiffs are likely to succeed on the merits of their allegations contained herein, would suffer irreparable injury in the absence of equitable relief, and the balance of hardships favors the Plaintiffs. Therefore, Plaintiffs are entitled to injunctive relief

enjoining the Defendants from using the current State House districts in any future primary or general election.

76. Because of the declaratory and injunctive relief Plaintiffs seek, this Court should retain jurisdiction to (1) redraw the current State House districts, and (2) prohibit and enjoin the Defendants from implementing any map that violates the Constitution or federal law.

77. Plaintiffs have been damaged by the delay and uncertainty and have had to employ the services of legal counsel to pursue their interest and to protect their legal and constitutional rights and are thereby entitled to an award of attorneys' fees and costs associated with this action.

78. Plaintiffs have suffered damages.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare the current State House districts invalid due to malapportionment in violation of the requirements of the United States Constitution and the New Mexico Constitution;

B. Enjoin the Defendants from using the current State House districts in any future primary or general election, and from using any redistricting plan that violates the Constitution, federal law or New Mexico law;

C. Redraw the current State House districts;

D. Retain jurisdiction to determine the validity of any redistricting plan adopted using the New Mexico Supreme Court's erroneous instructions;

E. Declare that the New Mexico Supreme Court's February 10, 2012 Order violates the Constitutional requirements for redistricting of state legislative bodies by a court, as would any redistricting plan adopted in accordance with the Order;

E. Award Plaintiffs' damages and reasonable attorney fees and costs in this action, including but not limited to attorney fees, expert witness fees, and other costs and expenses as authorized under 42 U.S.C. § 1983, 42 U.S.C. 1988 and 42 U.S.C. § 1973; and,

F. Award such other and further relief as the Court may deem proper.

Respectfully submitted by:

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